

Left Behind by Act 60: Pennsylvania's Low-Wage Workers

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My name is Julia Simon-Mishel. I am a Skadden Fellow and Staff Attorney at Philadelphia Legal Assistance. As an attorney in the Public Benefits Unit I spend the majority of my time on unemployment compensation cases on behalf of low-wage workers. During the previous year I represented over 150 clients in the unemployment compensation process and supervised the representation of countless more. Thank you for allowing me to speak with you today about my clients' experiences with the UC system.

The Great Recession created a false national narrative of the typical unemployment compensation recipient, one that encourages the perception of claimants as unscrupulous "takers." Let me begin by dissuading you of that narrative. My clients are hardworking individuals, many of whom, before losing their jobs through no fault of their own, had supported themselves solely through their earnings. They come from many different racial and cultural backgrounds, but one common question connects them all. It is the same question almost every client poses to me when he or she first walks into my office: **Can you get me my job back?**

One type of client I see often illustrates the fragile economic stability of low-wage workers despite years of hard work. She is an African American woman in her mid-fifties, we can refer to her as Ginny. Ginny has worked many jobs for her entire life, but most recently had been in the same position for nearly thirty years. She loved her job – she loved getting up to work in the morning, being productive, and having an impact on the lives of the people with whom she worked. She earned a low-wage salary, but it was enough to have a stable life. Every extra dollar went to helping out a family member or neighbor in need. Ginny had no real savings, but owned the house she lived in despite a hefty mortgage. Then a misunderstanding at her job led to her sudden discharge. Devastated and without the only source of income she had known for most of her life, she turned to family members and friends for help. No one had the financial stability to help her. She could not imagine being unemployed for long, but after several weeks passed and she fell behind on her mortgage, Ginny applied for unemployment compensation.

The claimants I see on a daily basis do not want unemployment compensation, they want to work. But because they have lost their jobs, often suddenly without any recourse, they are forced to rely on the only safety net available to them: unemployment compensation. They feel embarrassed about their unemployment, and their experiences with the UC system often leave them further demoralized. Changes to the UC system over the past years have only exacerbated those negative experiences, especially when my clients face significant barriers to unemployment compensation that have no relationship to their separation from work.

One of the most significant barriers my clients have faced are the changes made by Act 60 to the financial eligibility requirements. For these clients, they never even have the chance to get to the

merits of their cases. Although a worker can be fired without cause in an at-will employment state, unemployment compensation is intended to ensure that workers get benefits when there was not good cause for their discharge. But now some claimants are stopped at the front door by Act 60's 49.5% rule. A client who was fired without real cause, like my client who accidentally took the wrong lunch bag from the fridge, may never get unemployment compensation because of the new financial eligibility requirements.

For a claimant to be found financially eligible after Act 60, the percentage of base-year wages that must be earned outside of the high quarter is 49.5%. That pretty much means that if my clients have an unusually high quarter, even if they are earning consistently the rest of the year, they are barred from unemployment compensation. This runs counter to how we want our state's workers to act. We want to encourage them to work and earn as much as possible. But for many of them, that can have negative consequences when the work disappears.

To help illustrate the problems caused by the 49.5% rule, I would like to share the stories of some of my clients. Because I share attorney-client privilege with these claimants, I have changed their names and slightly altered their stories so that they cannot be identified.

Many of you have heard about how the financial eligibility rules have harmed some seasonal workers, especially members of the building trades. Through PLA's work with unemployment compensation claimants, I've identified four different groups of workers that are unfairly disadvantaged by the financial eligibility guidelines: seasonal/migrant workers, low-wage workers with several part-time jobs, workers who had an unexpected high quarter at the end of their employment, the long term unemployed and new entrants to the labor market.

1. Seasonal/Migrant Workers

Similar to members of the building trades, low-wage seasonal workers have also been hit hard by the 49.5% rule. Many of these workers earn the majority of their income during certain months and therefore often have a high quarter that disqualifies them from unemployment compensation. For example:

- a. Janet had worked for a local college in its cafeteria for nearly fifteen years. For many of those years she had been forced to collect unemployment compensation during the summer months while she looked for work. She was never given reasonable assurance that her job would be available to her in the fall. In May 2014, once the school year ended, she applied for unemployment compensation. Because of the effect of school breaks, she had a high quarter from January - March 2013 and was ineligible for benefits.
- b. Pedro worked on an orchard farm during the summer and fall. He would typically begin work in June and would continue late into the fall, usually until mid-November. In the spring months he would try to pick up some part time work. After the orchard job ended in December 2014, he applied for unemployment. But because he had a high quarter from July-September 2013, he was ineligible.

He applied again in January, but was denied once more because of a high quarter in July - September 2014.

2. Low-Wage Workers with Several Part-Time Jobs

The most common type of clients we see with ineligible financial determinations based on the 49.5% rule are those who are struggling to make ends meet by working several part-time jobs. These clients are working hard to find whatever employment they can – from janitorial work, to retail, to fast-food, to car washing and building security. But because their income is so variable, and they take as much work whenever they can get it, these clients typically have high quarters that will disqualify them for unemployment if and when their part-time work disappears.

- a. Danny worked several part-time jobs to provide for his two young children. During the past year he had done mostly landscaping and electrical work. He happened to get a lot of hours from the electrical work in the fall of 2014, so when he applied for unemployment compensation in April, after being laid off, he was ineligible for benefits under the 49.5% rule.
- b. Mary juggled three part-time jobs to provide for her young daughter and her ailing grandmother. Her most consistent work was with a retail clothing chain where she worked the cash register. Mary's manager gave her extra hours, including overtime, during the holiday shopping season because the store was busy. When the retail company shut down the store in May 2015 and her other jobs offered very few hours, Mary applied for unemployment compensation. She was denied because of her high quarter from October - December 2014.

3. Workers who Receive Pay-Outs at the End of their Employment

Workers who have been at the same job for many years will often have accrued vacation or sick leave that may be paid out when they lose their jobs. This causes a spike in their income during their final quarter of work. While we recognize that for some claimants, this will not be an issue if they file for benefits immediately after their employment ends. But for others, who spend time searching for a job before turning to unemployment, it can be problematic. For instance, Gerry worked for a local hospital for nearly twenty years until he was forced to quit due to health reasons (but was still able and available for work). His employer paid out several weeks of vacation pay in his last paycheck. Gerry then moved out of state for several months to look for work in Atlanta, where his sister lived. He then moved back to Philadelphia and applied for unemployment compensation. He was denied because the quarter that included his last three months of work was abnormally high due to the paid out vacation days.

4. Long-term Unemployed Workers and New Entrants to the Labor Market

The new financial eligibility guidelines can be especially difficult for workers attempting to get back into the labor force or new entrants to the labor force. The formerly long-term unemployed do not have record of steady income in their base year to balance out a high quarter. Similarly, new entrants to the labor force, like recent college graduates, may have had some part-time work but nothing significant enough to balance out the effect of a ninety-day probationary period at a new job that caused a high quarter.

- a. Jonny lost his manufacturing job during the Great Recession. He applied for jobs for nearly two years before giving up and moving in with his sister to help care for their mother. His sister recently lost her home, so Jonny began searching for work again. He found a job at a local warehouse where he worked for eight months before the company was bought out. He applied for unemployment compensation, but was initially denied because due to the base year, he did not have enough earnings. He waited *three months* until the next quarter to file again, but even though he now had enough wages and credit weeks, he was denied based on a high quarter.
- b. Latanya went back to college to get her bachelor's degree after becoming a single mother as a teenager. After graduation she found a job with a local marketing company. She was given a six month probationary period. At the end of the probationary period the employer decided it was not a good personality fit and let Latanya go in June 2015. She looked for work again, but when she was unsuccessful she filed for unemployment in July. Because Latanya had started her job in mid-November, she was ineligible for benefits based on her high quarter from January – March 2015. Even if she were to apply again in October, it is unclear whether her earnings from April and May would be enough to establish financial eligibility.

For almost all of these workers, unemployment compensation is the only safety net available to prevent them from falling into a cycle of poverty. As almost all of my clients are low-wage workers, their benefits would place the least amount of stress on the Trust Fund because they often have low weekly benefit rates. But for them, that weekly benefit rate goes a long way. For many low-wage workers, unemployment compensation is the difference between keeping their home and being out on the street. Most of these individuals would be eligible based on the merits of their separation from employment – but never even get to that point because of the financial eligibility guidelines. Despite working hard, sometimes at several jobs, many of my clients have been barred from unemployment compensation, in direct contrast to the public policy underlying the statute, to protect against “the resulting burden of indigency [that] falls with crushing force upon the unemployed worker, and ultimately upon the Commonwealth and its political subdivisions.” Unemployment Compensation Law, 43 P.S. § 752 (1936).

I ask that as the legislature considers changes to the financial eligibility guidelines, you consider the destructive impact of Act 60 upon the already fragile economic stability of our state's low-wage workers.

Thank you for this opportunity to testify before you on this important topic. I would be happy to address questions.